

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	:	
	:	
v.	:	<b>1:98CR322-3</b>
	:	
AARON SCOTT BATTLE,	:	
Defendant.	:	

**MOTION FOR LEAVE TO FILE NOTICE OF APPEAL OR, IN THE ALTERNATIVE,  
MOTION FOR THE COURT TO REISSUE IT'S ORDER WITH EFFECTIVE DATE OF  
MAY 16, 2013**

NOW COMES counsel for Defendant, Christopher R. Clifton, and moves the Court to enter an Order allowing Defendant to file Notice of Appeal out of time, and in support thereof shows unto the Court the following:

1. That the Order Denying Motion for Sentence Reduction Pursuant to 18 U.S.C. 3582(c)(2) in this matter was filed on March 15, 2013.
2. That same was received in the office of counsel for Defendant via electronic filing on March 16, 2013. However, counsel did not have actual notice of said Order until May 7, 2013, as more fully described hereinbelow.
3. That counsel has worked diligently on behalf of the Defendant in this matter since February of 2009.
4. That the Defendant has been very involved in his case, offering thoughts regarding changes in the law, research and other insights to counsel. Counsel has had an ongoing strong relationship with the Defendant in this matter.
5. That counsel was able to secure a sentence reduction under 18 U.S.C. 3582 in July of 2011.

6. That thereafter counsel was appointed for Defendant to pursue another reduction 18 U.S.C. 3582.
7. That counsel filed the initial “Second Waive” Motion on behalf of the Defendant in February of 2012.
8. That upon further conversations with the Defendant, further research and preparation, counsel filed an Amended and Supplementary Motion on May 9, 2012.
9. That the Court in this matter entered an Order Denying the Second Waive Motion on March 15, 2013.
10. That counsel missed that filing and did not have actual notice of that filing until Tuesday, May 7, 2013.
11. That counsel has, for the last sixty days, been preparing a Petition for Writ of Certiorari to the United States Supreme Court, said Writ having been filed on Monday, May 13, 2013.
12. That as soon as counsel was made aware of the March 15, 2013 filing, counsel contacted Robert Hamilton of the United States Attorney’s office regarding the Order.
13. That counsel also called the Clerk of Court for the Middle District to determine what, if anything, could be done to preserve defendant’s ability to file a Notice of Appeal in light of counsel’s oversight.
14. That undersigned counsel is in the process of moving his office to a new location.

15. That counsel does not make it a habit of missing deadlines or overlooking electronic filings in his federal practice.
16. That counsel has contacted Robert Hamilton, Assistant U.S. Attorney, and he objects to counsel's Motion.
17. That the responsibility for not filing a timely Notice of Appeal rests squarely on the fault of undersigned counsel.
18. That counsel humbly requests that the Court either allow a Notice of Appeal be entered on behalf of the Defendant out of time or, in the alternative, to reissue the Order Denying Defendant's 3582 Motion with an effective date of May 16, 2013. See, *Person v. United States*, 2005 U.S. Dist. LEXIS 18960\*1, See also, *U.S. v. Peak*, 992 F.2<sup>nd</sup> 39; 1993 U.S. App. LEXIS 8033.

WHEREFORE and based on the foregoing, counsel, Christopher R. Clifton, respectfully requests this Court to enter an Order granting leave for the Defendant to file a Notice of Appeal out of time or, in the alternative, to reissue the Court's Order to allow the Defendant to exercise his Notice of Appeal and for such other and further relief as the Court deems just and proper.

This the 16<sup>th</sup> day of May, 2013.

/s/Christopher R. Clifton  
Christopher R. Clifton  
Attorney for Defendant  
N.C. State Bar Number: 21981  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 16, 2013 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Mr. Robert Hamilton, Assistant United States Attorney.

This the 16<sup>th</sup> day of May, 2013.

/s/Christopher R. Clifton  
Christopher R. Clifton  
Attorney for Defendant  
N.C. State Bar Number: 21981  
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